

AMENDING SECTION 905 OF THE TAX REFORM ACT OF  
1969

---

DECEMBER 9, 1970.—Committed to the Committee of the Whole House on the  
State of the Union and ordered to be printed

---

Mr. MILLS, from the Committee on Ways and Means, submitted the  
following

**REPORT**

[To accompany H.R. 17984]

The Committee on Ways and Means, to whom was referred the bill (H.R. 17984) to amend section 905 of the Tax Reform Act of 1969, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Page 2, line 1, strike out "specific".

Page 2, line 6, strike out "December 31, 1970," and insert "July 31, 1971,"

**I. SUMMARY**

The bill, H.R. 17984, is concerned with a provision added to the tax laws by the Tax Reform Act of 1969. Under that act, a corporation recognizes gain if it distributes appreciated property to a shareholder in redemption of his stock. Transitional rules, however, provide for the nonrecognition of gain where there was a binding contract, a public offering, or a filing with a public agency with respect to the redemption before the matter was considered in Congress. This bill adds another transitional rule under this provision where certain conditions are met. The principal conditions limit the rule to cases where a corporation made provision for a redemption before the matter was discussed in Congress, but only if a significant proportion of the stock was redeemed in property other than money before the effective date of the 1969 act.

This bill has been reported unanimously by your committee, and the Treasury Department has indicated it has no objection to its enactment.

## II. REASONS FOR THE BILL

The Tax Reform Act of 1969 (sec. 905) provided that if a corporation distributes appreciated property to a shareholder in redemption of some or all of his stock, gain is recognized to the distributing corporation (sec. 311(d) of the code).

Transitional rules provided in the 1969 act made the provision inapplicable to contracts in existence on November 30, 1969, and offers which were made before December 1, 1969, or were in accordance with a ruling request filed with the Internal Revenue Service or a registration statement filed with the Securities and Exchange Commission before that date. The effect of these rules, in general, was to continue the nonrecognition of gain in those cases in which a definite program was apparent before the time the matter was discussed in Congress as evidenced by a binding contract, a public offer, or a written description of such proposed program filed with a public agency.

A substantially similar type of case has come to the attention of your committee, where corporations have, in fact, begun plans of redemption pursuant to boards of directors resolutions adopted before the congressional consideration of the provision and where a substantial part of the plans had been carried out before the date of enactment of the 1969 act. The type of situation referred to is not within the transitional rules of the 1969 act, however, because they do not involve a binding contract, public offer, or description filed with a public agency. Your committee believes, however, that the existence of an authorization to redeem—taken together with the fact that to a significant extent the program had been carried out—is substantially the equivalent of the situations covered by the existing transitional rules. It has, therefore, provided an additional transitional rule covering cases of the type described above.

## III. EXPLANATION OF BILL

The bill (as amended) adds a new transitional rule to the Tax Reform Act of 1969 (sec. 905(c)(4)) to the effect that gain is not to be recognized upon the distribution of appreciated property to a shareholder in redemption of part or all of his stock in the corporation (under sec. 311(d) of the code), where the transaction satisfies the following conditions.

First, the redemption must be pursuant to a resolution adopted before November 1, 1969, by the Board of Directors, authorizing the redemption of a specific amount of stock representing more than 10 percent of the outstanding stock of the corporation at the time of the adoption of the resolution.

Second, the exception is restricted to those cases where more than 40 percent of the stock which the Directors authorized to be redeemed was, in fact, redeemed before December 30, 1969.

Third, more than one-half of the stock redeemed before December 30, 1969, must have been redeemed with property other than money. This condition is met, however, even though the authorization by the Board of Directors permitted the redemption to be made either in cash or other property, as long as, in fact, more than half of the stock was redeemed with property other than money.

Fourth, the property used in the redemption must have been owned by the distributing corporation (or its wholly owned subsidiary) on December 1, 1969.

Fifth, the stock redeemed must have been outstanding on November 30, 1969.

Sixth, the stock must be redeemed before July 31, 1971, and must be canceled before that date (that is, it must not be held as Treasury stock).

#### IV. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

#### SECTION 905 OF THE TAX REFORM ACT OF 1969

#### SEC. 905. CORPORATIONS USING APPRECIATED PROPERTY TO REDEEM THEIR OWN STOCK.

(a) GENERAL RULE.—Section 311 (relating to taxability of corporation on distribution) is amended by adding at the end thereof the following new subsection:

“(d) APPRECIATED PROPERTY USED TO REDEEM STOCK.—

“(1) IN GENERAL.—If—

“(A) a corporation distributes property (other than an obligation of such corporation) to a shareholder in a redemption (to which subpart A applies) of part or all of his stock in such corporation, and

“(B) the fair market value of such property exceeds its adjusted basis (in the hands of the distributing corporation), then gain shall be recognized to the distributing corporation in an amount equal to such excess as if the property distributed had been sold at the time of the distribution. Subsections (b) and (c) shall not apply to any distribution to which this subsection applies.

“(2) EXCEPTIONS AND LIMITATIONS.—Paragraph (1) shall not apply to—

“(A) a distribution in complete redemption of all of the stock of a shareholder who, at all times within the 12-month period ending on the date of such distribution, owns at least 10 percent in value of the outstanding stock of the distributing corporation, but only if the redemption qualifies under section 302(b)(3) (determined without the application of section 302(c)(2)(A)(ii));

“(B) a distribution of stock or an obligation of a corporation—

“(i) which is engaged in at least one trade or business,

“(ii) which has not received property constituting a substantial part of its assets from the distributing corporation, in a transaction to which section 351 applied or as

a contribution to capital, within the 5-year period ending on the date of the distribution, and

“(iii) at least 50 percent in value of the outstanding stock of which is owned by the distributing corporation at any time within the 9-year period ending one year before the date of the distribution;

“(C) a distribution before December 1, 1974, of stock of a corporation substantially all of the assets of which the distributing corporation (or a corporation which is a member of the same affiliated group (as defined in section 1504(a)) as the distributing corporation) held on November 30, 1969, if such assets constitute a trade or business which has been actively conducted throughout the one-year period ending on the date of the distribution;

“(D) a distribution of stock or securities pursuant to the terms of a final judgment rendered by a court with respect to the distributing corporation in a court proceeding under the Sherman Act (26 Stat. 209; 15 U.S.C. 1-7) or the Clayton Act (38 Stat. 730; 15 U.S.C. 12-27), or both, to which the United States is a party, but only if the distribution of such stock or securities in redemption of the distributing corporation's stock is in furtherance of the purposes of the judgment;

“(E) a distribution to the extent that section 303(a) (relating to distributions in redemption of stock to pay death taxes) applies to such distribution;

“(F) a distribution to a private foundation in redemption of stock which is described in section 537(b)(2)(A) and (B); and

“(G) a distribution by a corporation to which part I of subchapter M (relating to regulated investment companies) applies, if such distribution is in redemption of its stock upon the demand of the shareholder.”

(b) CONFORMING AMENDMENTS.—

(1) Section 311(a) is amended by striking out “subsections (b) and (c)” and inserting in lieu thereof “subsections (b), (c), and (d)”.

(2) Sections 301(b)(1)(B)(ii), 301(d)(2)(B), and 312(c)(3) are each amended by striking out “subsection (b) or (c)” and inserting in lieu thereof “subsection (b), (c), or (d)”.

(c) EFFECTIVE DATE.—

(1) Except as provided in paragraphs [(2) and (3)] (2), (3), and (4), the amendments made by subsections (a) and (b) shall apply with respect to distributions after November 30, 1969.

(2) The amendments made by subsections (a) and (b) shall not apply to a distribution before April 1, 1970, pursuant to the terms of—

(A) a written contract which was binding on the distributing corporation on November 30, 1969, and at all times thereafter before the distribution,

(B) an offer made by the distributing corporation before December 1, 1969,

(C) an offer made in accordance with a request for a ruling filed by the distributing corporation with the Internal Revenue Service before December 1, 1969, or



(D) an offer made in accordance with a registration statement filed with the Securities and Exchange Commission before December 1, 1969.

For purposes of subparagraphs (B), (C), and (D), an offer shall be treated as an offer only if it was in writing and not revocable by its express terms.

(3) The amendments made by subsections (a) and (b) shall not apply to a distribution by a corporation of specific property in redemption of stock outstanding on November 30, 1969, if—

(A) every holder of such stock on such date had the right to demand redemption of his stock in such specific property, and

(B) the corporation had such specific property on hand on such date in a quantity sufficient to redeem all of such stock. For purposes of the preceding sentence, stock shall be considered to have been outstanding on November 30, 1969, if it could have been acquired on such date through the exercise of an existing right of conversion contained in other stock held on such date.

(4) *The amendments made by subsections (a) and (b) shall not apply to a distribution by a corporation of property (held on December 1, 1969, by the distributing corporation or a corporation which was a wholly owned subsidiary of the distributing corporation on such date) in redemption of stock outstanding on November 30, 1969, which is redeemed and canceled before July 31, 1971, if—*

*(A) such redemption is pursuant to a resolution adopted before November 1, 1969, by the Board of Directors authorizing the redemption of a specific amount of stock constituting more than 10 percent of the outstanding stock of the corporation at the time of the adoption of such resolution; and*

*(B) more than 40 percent of the stock authorized to be redeemed pursuant to such resolution was redeemed before December 30, 1969, and more than one-half of the stock so redeemed was redeemed with property other than money.*

○

(1) an offer in the form of a subscription with a subscription price  
from time to time, the Board may, at any time, determine to  
be made in the form of a subscription.

For purposes of subsections (1) to (3), an offer shall  
be treated as an offer only if it is in writing and not revocable  
by the offeror.

(2) The provisions made by subsections (1) and (3) shall  
not apply to a subscription by a corporation of shares in another  
company, or to a subscription of shares in a company which is  
a subsidiary of the company making the subscription.

(3) Every holder of such stock on a date shall be  
entitled to a dividend of the stock in such amount  
as may be determined by the Board.

(4) The corporation shall, within the time specified in the  
offer, pay to the subscribers the amount of the subscription  
for shares in the corporation, and shall, within the time  
specified in the offer, pay to the subscribers the amount of the  
subscription for shares in the corporation, and shall, within the  
time specified in the offer, pay to the subscribers the amount of the  
subscription for shares in the corporation.

(5) The corporation shall, within the time specified in the  
offer, pay to the subscribers the amount of the subscription  
for shares in the corporation, and shall, within the time  
specified in the offer, pay to the subscribers the amount of the  
subscription for shares in the corporation, and shall, within the  
time specified in the offer, pay to the subscribers the amount of the  
subscription for shares in the corporation.

(6) The corporation shall, within the time specified in the  
offer, pay to the subscribers the amount of the subscription  
for shares in the corporation, and shall, within the time  
specified in the offer, pay to the subscribers the amount of the  
subscription for shares in the corporation, and shall, within the  
time specified in the offer, pay to the subscribers the amount of the  
subscription for shares in the corporation.

(7) The corporation shall, within the time specified in the  
offer, pay to the subscribers the amount of the subscription  
for shares in the corporation, and shall, within the time  
specified in the offer, pay to the subscribers the amount of the  
subscription for shares in the corporation, and shall, within the  
time specified in the offer, pay to the subscribers the amount of the  
subscription for shares in the corporation.



